Exploring the tensions in Public Law Child Care Proceedings: an analysis of the legislative boundaries of decision-making within pre-proceedings protocols and the role of advocacy in promoting justice for families

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I am particularly indebted to the advice, support and patience, from my partner, daughter, family, friends and colleagues.

Dedication

To my father Clifford (1932 - 1994) and my mother Doreen (1934 - 2005) who gave so much, and who would have been very proud.

Thank you.

Exploring the tensions in Public Law Child Care Proceedings: an analysis of the legislative boundaries of decision-making within pre-proceedings protocols and the role of advocacy in promoting justice for families.

Abstract

This PhD by published work consists of:

- **1 single authored monograph;**
- **1 single authored paper in a refereed journal;**
- **4 main authored articles in refereed journals;**
- **3 joint authored articles in refereed journals;**
- **1 joint authored paper in a non refereed journal; and**
- **3 joint authored published reports.**

It covers the period 2009-2014

This thesis and the papers submitted demonstrate my significant contribution to a body of knowledge that provides a rich and unique insight to the development of changes in legislation and protocols in child protection practice. Particular expertise is threefold: the impact on the practice of all professionals involved with vulnerable families and children; the impact on the assessment of risk and working with families and children; and the impact on the 'timetable for the child'. The publications reflect an examination of pre-proceedings protocols over a 5-year period. Throughout, the work demonstrates a theoretical and practical commitment to fairness and justice for families.

The rationale that underpins this thesis is the need to explore the impact of procedural changes to the lives of children and their families. The rhetoric of improving pre-proceedings work in an attempt to divert cases away from court, and to ensure decisions that are made for children are both rigorous and timely, is at odds from the reality of practice on the ground. The recent hegemonic concern with the timetable for the child (Holt and Kelly, 2014) reinforces a change agenda that was ushered in ahead of the Children and Families Act that became law on 22nd April 2014. The President of the Family Division, Sir James Munby, has stated that 26 weeks completion time when cases progress to court is '*a deadline not a target',* reinforcing the message that only a '*comparatively small number of exceptional cases'* will fall outside it (Munby, 2013:4). This leaves little time for the court to intervene when cases have not been properly progressed at the pre-proceedings stage.

The evidence from detailed observations of practice at all levels within pre-

proceedings protocols affords an opportunity to send a clear message to legislators, policy makers and practitioners. Front-loading and diverting more cases into pre-proceedings protocols is quite simply a strategic measure to reduce the financial burden away from the courts and to place this elsewhere. Local authorities have child protection systems that are properly designed to support children who are in need of protection, and where it has been decided by professionals from a range of agencies working with families that the risk cannot be managed without the need to seek the involvement of the court, there should be no further delay. My concern is that in many instances children are already left holding the risk for too long. The question must be raised as to why, when a range of professionals working with the child and their family make the decision that an application to court should be made, a system that purports to hold children and families at the heart builds in further delay.

Publications in chronological order:

1. Broadhurst, K. and Holt, K.E. (2010) Partnership and the limits of procedure:prospects for relationships between parents and professionals under the Public Law Outline, *Child and Family Social Work* Vol15, Issue 1, 97-106. First published online 23 September 2009 DOI: 10.iii/j.1365-2206.209_00648x (R***)

2. Broadhurst, K.; Holt, K.E. and Doherty, P. (2011) Accomplishing parental engagement in child protection practice? A qualitative analysis of parent-professional interaction in pre-proceedings work under the Public Law Outline, *Qualitative Social Work* First published online 30 June 2011 DOI: 10.1177/1473325011401471 (R***)

3. Featherstone, B., Broadhurst, K. and Holt, K.E. (2011) Thinking systemically, thinking political: Building strong partnerships with families in the context of rising inequality? *British Journal of Social Work (Advanced Access)* First published online 7 June 2011. DOI: 10. 1093/bjsw/bcr080 (R***)

4. Broadhurst, K, and Holt, K.E. (2012) Involving the Family Court Advisor in Pre-proceedings Practice - Initial lessons from the Coventry and Warwickshire Pilot, *Family Law Week.* http://www.familylawweek.co.uk/site.aspx?i=ed97110 (U***)

5. Holt, K.E. and Kelly, N. (2012 a) Rhetoric and Reality Surrounding Care Proceedings: family justice under strain. *Journal of Social Welfare and Family Law.* http://dx.doi.org/10.1080/09649069.2012.718531 (R**)

6. Holt, K.E. and Kelly, N. (2012 b) Administrative Decision Making in

Child- Care Work; Exploring Issues of Judgment and Decision Making in the Context of Human Rights and its Relevance for Social Workers and Managers. *British Journal of Social Work* (Advanced Access) doi: 10.1093/bjsw/bcs168 First published online: November 1, 2012 (R**)

7. Broadhurst, K.; Holt, K.E.: Kelly, N., Doherty, P. (2012) Coventry and Warwickshire Pre-Proceedings Pilot, Interim Research Report. (U***)

8. Broadhurst, K., Holt, K.E., Kelly, N., Doherty, P. (2013) Coventry and Warwickshire Pre-Proceedings Pilot, Final Research Report. (U***)

9. Holt, K.E., Kelly, N., Broadhurst, K., Doherty, P. (2013) Liverpool Pre-Proceedings Pilot, Interim Research Report. (U**)

10. Holt, K.E. (2013) Territory Skirmishes with DIY Advocacy in the Family Courts: a Dickensian misadventure. *Journal of Family Law.* (R*)

11. Holt, K.E., Kelly, N., Doherty, P. & Broadhurst, K. (2013) *Access to Justice for families?* Legal advocacy for parents where children are on the 'edge of care': an English case study. *Journal of Social Welfare and Family Law.* Vol.35, Issue 2, p1-15 (R**)

12. Holt, K.E., and Kelly, N. (2014) Why parents matter: exploring the impact of a hegemonic concern with the timetable for the child. *Child and Family Social Work.* Doi 10.1111/cfs12125 (R**)

13. Holt, K.E. (2014) Child Protection Law. Palgrave (R*)

Introductory statement

As an experienced social worker of 30 years, a qualified barrister of 9 years and an academic of 11 years practicing and researching in the area of child protection and pre-proceedings protocols, I am able to claim with a degree of authority a unique lens (Rapoport, 1986) on a changing landscape in child protection practice that provides an original and distinct contribution to a body of knowledge in this area. The work submitted for this thesis reflects my professional and academic development where I am striving consistently for fairness and justice for families. My background has enabled a significant contribution to knowledge that draws on legal, sociological, and social work theory and practice. The submitted works were written intentionally to a wide ranging audience; academics, legal practitioners, social workers and students, with the view that if change is to occur for the benefit of families it can work only if the multiple stakeholders in this complex area of child protection work together towards whole system change.

There is no doubt that within judicial care proceedings there have been serious concerns about significant delays in decision making and the consequences for children and their families are well documented. The challenges of avoiding unnecessary delays have been the subject of much debate with legal and social work communities attributing responsibility to each other. The creation and implementation of the Public Law Outline in 2008 intended to frontload more rigorous social work into pre-proceedings practice, and with the reduction in duration of care proceedings to 26 weeks it was hoped that cases that proceeded to court might be resolved more quickly and, overall, risks and delays for children and families would be reduced.

The body of work for this thesis arose from an analysis of an ethnographic study of pre-proceedings meetings between the years 2009–2011. The development of this work represents the first major theoretical and empirical exploration of pre-proceedings practice in child protection *as it occurs*. The thesis explores tensions in public law childcare proceedings following the introduction of the Public Law Outline (2008). The publications submitted examine two pertinent issues which arise from the implementation of the Public Law Outline (PLO) (2008), the Practice Direction 36C (2013), and the Children and Families Act that became law on 22nd April 2014. Firstly, the work explores the boundary of decision making for children and families when decisions are increasingly moved into an administrative rather than judicial space. Secondly, in a climate of austerity, limited resources and tighter timescales for cases when they are in court, consideration is given to as to the type, availability and quality of advocacy and representation to support children and their parents in the changing landscape of pre-proceedings protocols and practice. A brief summary of the issues and findings is presented below.

The research into pre-proceedings practice over 5 years provides the only material to date that examines the reality of pre-proceedings practice *as it occurs* within the child protection process. It has included observations of pre-proceeding meetings, analysis of case files and minutes of pre-proceedings meetings, interviews with social work practitioners and managers, interviews with members of the legal profession and Family Court Advisors and the shadowing of a Family Court Judge. This has allowed the development of a unique lens on the reality of a pre-proceedings protocol and has allowed the opportunity to make a significant contribution to knowledge in terms of what that actually means for children and families. Where fieldwork and data analysis

was in collaboration with others the work was distributed to reflect both individual and team strengths. I engaged in observations, case file data collection and interviews with professionals throughout the five-year period. As well as contributing to the data collection and analysis, in particular my legal background facilitated engagement with senior members of the judiciary, designated family court judges and the contribution of accurate case law and legal interpretations of material. Given the socio-legal context of this research my contribution was invaluable. Some of the submitted work is single authored, I have indicated the contribution of my work to joint authored works in the list of publications. Joint authorship declaration forms have been submitted and approved by the research committee at the University of Bradford. The collaborative nature of much of the work reflects a belief in drawing upon a range of understandings and experiences to explore complex phenomena and to facilitate change that multiple stakeholders in a decision making process can engage with.

My contribution to knowledge is an evidenced contention that the deadline of 26 weeks when cases progress to court, and a formal pre-proceedings protocol is not the answer to more effective social work and more optimal outcomes for children and families. The pre-proceedings protocol runs in parallel, or more usually towards the end of a child protection process, and introduces increased bureaucracy and procedure. This leaves social workers and families confused as to where, when and by who decisions are being made. Within pre-proceedings protocols and practice important decisions are being made without the oversight of the court. Whilst the PLO formally allowed parents the opportunity to access legal advice in pre-proceedings I argue that, even where advocacy is available and accessed by families, it is at best patchy, and now further threatened by cuts to legal aid. The interpretation I present is

that the rationale for changes to policy and practice with regard to the timetable for the child are simply rhetoric. Whilst court costs may be reduced there is likely to be spillage elsewhere with children potentially left holding risk for a longer period.

Overview

Background

Decision-making in the context of child protection practice has traditionally been located within the local authority with involvement from other agencies/organisations who have a duty in law to offer support (Holt, 2014). This unitary system of child protection under the Children Act 1989 may not be without its faults, but recent changes to policy and legislation (MOJ, 2008: MoJ and DfE, 2012; DfE, 2013; and the Children and Families Act (2014) have introduced a further layer of procedure. This has resulted in additional resources being required to operate in what seem to be two systems working, at best, in parallel. At a time when child protection services are already stretched beyond capacity, I argue that introducing further instrumental approaches in order to achieve targets and reduce costs is an ill-conceived plan.

On 31st March 2013, there were 382,400 children in need in England, a rate of 325.7 per 10,000 children. Approximately 60,000 child protection conferences were held in England in the period 2012-13, and 52,700 children were subject of a child protection plan. There were a total of 68,110 children in care on 31st March 2013 (DfE, 2013). This highlights that cases within pre-proceedings and care proceedings are only part of the story. My concern is that when further procedures are introduced into an already fragile context of child protection practice, the emphasis on procedure eclipses the benefits of establishing effective working relationships with families

(Holt, 2014).

My intention is not to simplify what is a deeply complex area of child protection practice, but the system prior to the introduction of the PLO (2008) was at least clear and transparent. Social workers supported by colleagues from other agencies, worked together when a child was either suffering harm or there was a likelihood of future harm. Assessments of the child and their family through effective multi-agency working helped to inform the decision as to whether the child was at risk and therefore whether or not the child was in need of a child protection plan (Holt, 2014).

Commentators such as Featherstone et al, (2012) suggest the system of child protection within the UK is already too instrumental and business focused. However, my contention here is that whilst this may be accurate, many children are nevertheless supported effectively with child protection plans that allow them to remain living within their own immediate or extended family (Holt, 2014).

The focus of good child protection practice is to assess and manage risk and to provide protection to some of the most vulnerable children and young people. Therefore, it is inevitable that in some circumstances following an assessment of the child and their family, a decision is made that the risk for the child is too high, and the only option available to the local authority is to make an application to court. This is an enormously difficult decision to make, and every social worker and child protection manager that has ever practiced in this area knows the consequences that flow from this decision (Holt, 2014).

The death of Baby Peter Connolly in 2008, which was reported in 2009, highlighted the tensions and difficulties of child protection practice following the tragic death of a child and there followed the inevitable inquiries and recommendations (Laming, 2009). Following the death of Peter Connolly local authorities experienced an unprecedented rise in the number of referrals to the service and not surprisingly a rise in the number of applications to court where children were subsequently assessed to be at risk (Holt, 2014). These changes are not surprising when located within a landscape of cuts to public spending, and a less tolerant attitude towards welfare more generally (Holt and Kelly, 2014). Rather than local authorities delaying making an application to court quite the reverse is evident. In the year April 2011 to March 2012, there were over 10,000 care applications in England involving more than 17,000 children. This figure rose to a record level of 11,000, involving over 18,000 children in the year 2012-13 (Cafcass, 2013).

Assessing risk within the context of child protection practice is severely curtailed within an increased culture of regulation and bureaucracy. Professor Eileen Munro addressed this very issue in her final report on child protection (Munro, 2011) and her recommendations are to be applauded if the current trend of social work practice within an 'iron cage of bureaucracy' is to be reversed (Wastel et al, 2010). In a context of increased digitisation and distance in social work practice, the focus is on achieving targets rather than engaging in face-to-face contact with children and their families, which is pivotal to managing risk within the community (Featherstone et al, 2012). Social workers are increasingly spending time away from front line practice and skill development has shifted from a toolbox for working with children and their families to navigating complex databases and migrating information from one form to

another (Broadhurst and Holt, 2010). If families are not able to turn their lives around in a prescribed timeframe (Featherstone et al, 2012), with an off the shelf package of care that allows the case to be closed by the social worker, the case is progressed to the next level. In a climate of targets and limited resources, there is likely to be 'an unforgiving approach to time and to parents' (Featherstone et al, 2013:5).

The Munro Report (2011), commissioned and endorsed by the government, made pertinent comments in relation to the need to reintroduce discretion and professional judgement by social workers, yet the recommendations from the report are set within a political context that continues to focus on targets and timescales. The pressure on front line professionals has never been so intense.

The changes introduced with the revisions to the PLO (2008), Practice Direction 36C, and the Children and Families Act (2014) will see further instrumental approaches to child protection practice introduced prior to an application to court being made (Broadhurst and Holt, 2010). I argue that to include more regulation and procedure at this stage will only serve to exacerbate the situation that may result in even more cases progressing to court. As an academic head of social work I am frustrated regularly by the claim from local agencies, policy makers and legislators, that students leave social work programmes without knowing how to complete the necessary forms required for practice. In the last eleven years since moving into social work education I continue to defend the need to educate social workers to be reflective, analytical, and critical practitioners who are able to assess risk. However, recent policy initiatives to train on the job leave little hope of what the future holds for the kind of knowledge required undertaking the most complex of assessments and planning (Holt, 2014).

Responding to an increase in the number of applications to court requires additional resources to be allocated to enable the court to process cases in a timely manner. Instead, what we have witnessed within public law child-care proceedings is a focus on diverting cases away from court with protocols aimed at achieving dispute resolution without the need to make an application to court. The approach to effective case management introduced with the PLO (2008), placed significant emphasis on pre-proceedings work and the effective engagement of parents that was seen to be pivotal in reducing court costs (Broadhurst et al, 2012). My concern here is that the impetus behind the drive to reduce both the number of care applications and the duration of proceedings are primarily financial (DCA, 2005).

The effective engagement of parents within a context of child protection practice is a highly contested area (Broadhurst and Holt, 2010), and my argument is that increased regulation and procedure will not improve partnership working when parents are tasked with not only understanding and navigating the child protection system, but understanding the relationship between this and the pre-proceedings protocol. If, and when, these processes are exhausted, parents could then find themselves navigating yet more procedures if an application to court is made, with 26 weeks in which to prepare for the prospect of losing a child. It should come as no surprise therefore, that within this context engaging parents in an attempt to divert cases away from court is challenging (Holt et al, 2013).

The prospect of successfully diverting cases away from court in the context of austerity cuts, the tragic death of Peter Connolly, and an increasingly risk averse culture is well rehearsed (Holt and Kelly, 2014) and there is a very real danger of

short-lived change.

There appears to be a misguided belief that local authorities are making applications to court that are unnecessary (Holt et al, 2013). If the argument purported that local authorities are making spurious applications is accurate, we must surely ask the question why the courts are progressing these matters beyond the initial application stage. The evidence speaks for itself in terms of case complexity, as these matters were taking nearly 60 weeks for the court to resolve, hence the impetus to divert cases away from court (Holt et al, 2013). It is too easy to shift the focus of responsibility to social workers and local authorities for the rise in applications with the resulting delays and costs - the courts are part of this system and perhaps rather than shifting the responsibility down to local authorities the increased burden should be absorbed by the courts who undoubtedly require additional resources to manage the increased workload.

To date there has been no work in the area of pre-proceedings practice *as it occurs* within the child protection process. However, research once proceedings had been instigated, raises important questions surrounding the value of pre-proceedings work within the court arena. In one of very few studies Masson et al, (2013) reported that the courts did not seem to pay much attention to what had occurred in the pre-proceedings stage. Significantly, in an area that has long been recognised as adding delay to court proceedings, judges expressed doubt as to whether an assessment completed or commissioned by the local authority in pre-proceedings could be truly independent, signalling the complexity of relationships within the family justice system. Rather than reducing time, my concern is that a front-loading of cases into the

pre-proceedings stage could result in a duplication of work with further inefficiency and delay (Holt, 2014). The front loading of cases in the hope of a quick win or short-lived change is neither safe nor desirable for children.

The development of empirical work for submissions to this thesis

In this section a brief overview of the development and trajectory of the research is provided, and at each stage of empirical work a summary of the contribution to knowledge is highlighted at the outset.

My research and this thesis has a focus on public law proceedings relating to children: specifically the decision making process for children and their families within pre-proceeding protocols. It began with an ethnographic study between the years 2009-2011. In this study I observed activities in social work offices, home visits, legal advice giving and pre-proceedings meetings. Interviews with professionals and families were also undertaken. This was a unique piece of research aimed at exploring and understanding the operationalization of a pre-proceedings protocol almost immediately after the PLO (2008). Findings highlighted that there was injustice occurring in pre-proceedings meetings for children and families, and following a presentation at a national research conference I was approached by a representative of Cafcass to consider exploring ways in which some of the issues observed might be addressed. Thus, the second aspect of the empirical work was undertaken where a Family Court Advisor was introduced into pre-proceedings with the aim of exploring whether bolstering pre-proceedings processes with additional resources would be

effective in ensuring justice for children and families, and in diverting cases away from court where it is safe and appropriate to do so.

Pivotal to the work is an exploration of how legislation, policy and practice is operationalized, understood and experienced by multiple stakeholders. There is no one single approach to the collection or analysis of data rather a mixed methods approach is adopted (Teddlie and Tashakkori, 2010). Whilst recognizing the theoretical tensions and debates of such an approach my work draws on the 'pragmatic view' that the research question is of primary importance. Techniques grounded in both positivism and interpretivism can be used best to explore a question layered in complexity: from understanding developments in policy and practice guidance: understanding organisational experiences of operationalizing legislation: understanding contextual and structural influences on decision making; and an understanding of individual experiences operating at different levels within pre-proceedings protocols.

At one level there has been an on-going analysis of the development of legislation, policy and practice guidance. From this has emerged a strand of discussion around the discourses implicit in the development of the pre-proceedings protocol, for example discourses around the timetable for the child, rights and responsibilities and economic discourses. (Holt and Kelly, 2012 a.; Holt and Kelly 2012 b.; Holt and Kelly, 2014)

At a second level, empirical data collection has taken place within a number of practice settings. All has involved extensive negotiation skills with, and access to, cases within several local authorities; has employed quantitative and qualitative

methods and has been disseminated at local, national and international level. Two projects have involved data collection in 7 sites. The second project developed the methodological approach and explored further the findings from the first project. Importantly this second project introduced a Family Court Advisor into pre-proceedings work to consider the potential impact on practice, assessment of risk and outcomes for children and families. This was a novel initiative and provides an original contribution to knowledge.

Initial project – Explorations of practice in pre-proceedings meetings in 4 local authorities, 2009-2011.

Summary of contribution to knowledge.

This study culminated in 4 important findings in pre-proceedings practice. Firstly, the dominant frame of decision making in pre-proceedings meetings was that of the local authority. Decisions were driven almost exclusively by a local authority agenda and children and families had little opportunity to question or input effectively to decision making. Secondly, the child was almost 'invisible' in the pre-proceedings meetings. There was no sense of the voice of the child or of their wishes. Thirdly, there was a tension between practitioners around where the boundary of decision making fell. Most children were already subject to a child protection plan and decisions made at the child protection conference/core group were not addressed in the pre-proceedings meeting and visa versa. Fourthly, confusion at pre-proceedings meetings was compounded where legal representatives for families were present. There was no independent representation for children and where advocates were present their contribution was at best patchy.

Outline of the study

Funding was obtained to undertake an initial pilot study in 4 local authorities between the years 2009 and 2011. This ethnographic study aimed to evaluate the impact of front-loading cases in the pre-proceedings stage. During this period I spent one day a week observing what were then referred to as legal gateway meetings (now following the PLO (2008), formally pre-proceedings meetings). Observations in social work offices and home visits were also undertaken. Social work practitioners, managers, lawyers, independent reviewing officers and parents were interviewed as part of this study and I spent three weeks shadowing a Designated Family Judge in one local authority to observe how cases were processed once an application to court was made.

Method

In this work transcriptions of 12 pre-proceedings meetings were produced verbatim. After several readings of that data by all researchers, subsections were then transcribed in more detail according to the usual conventions of conversational analysis (developed by Jefferson, 2004). The focus on certain aspects of the data for more detailed transcription can be considered usual in conversation analysis (Bazeley, 2013). Each team member worked on the same transcript individually before meeting together to discuss the work, this achieved early consistency in coding and interpretation of this data. This was not an attempt to produce 'reliability', rather an acknowledged process between the team to create a rigorous and transparent journey towards an argument built on clear and comprehensive evidence.

In terms of analysis this first study employed the micro-analysis of talk. This allowed the examination of real time interaction in the quasi-legal setting of the pre-

proceedings meeting, getting closer to the realities of practice (Todd and Fisher, 1993, Wetherell, 1998). Through a focus on the structure and content of conversation we can get close to the substance of competing definitions and claims *in situ* exploring the possibilities for institutional alignment with service users (Drew and Herritage, 1992). The analysis provided rich insights into the difficulties professionals encounter when trying to achieve consensual solutions for children outside the court arena (Broadhurst and Holt, 2010; Broadhurst et al 2011).

Findings

Four important findings emerged from this study. Firstly, the rhetoric of policy and the reality for children and families are not always the same; within agencies/organisations, it is the dominant frame that informs judgement, decisions, and actions that have a significant impact on the way other organisations/individuals are perceived or respond (Goffman, 1983; Broadhurst et al, 2011). Overall it was evident that the dominant frame of decision making was that of the local authority. Decisions were driven almost exclusively by a local authority agenda and children and families had little opportunity to question or input effectively to decision making.

Secondly, there was concern about the visibility and wishes and needs of children in these pre-proceedings meetings where decisions were being made without the oversight of the court. In reality the child/ren remained almost entirely invisible – the meeting was attended by adults, and focused almost exclusively on the ability of adults to make the necessary changes expected of them by the local authority. The child was often addressed by name only and I left the majority of meetings I observed without any knowledge or understanding of the particular needs or wishes of the

child.

Thirdly, there was clear tension amongst practitioners as to where the boundary fell between the decisions and recommendations of the child protection conference and core group meeting and the pre-proceedings meeting. In most cases children's social care had a lengthy previous involvement with the family, and in the majority of cases children had been subject to a child protection plan for at least two years (the majority of children remaining on a child protection plan). Despite the majority of children being the subject of a current child protection plan, the pre-proceedings protocol was operated in parallel to the child protection conference and planning and the two systems worked entirely separately. Decisions that were made within the child protection conference were not addressed in the pre-proceedings meeting and visa versa. This was confusing for both practitioners and families who were uncertain about boundaries of decision-making and how these should be communicated and managed (Holt, et al, 2013).

Finally, confusion was compounded when legal representatives arrived at the pre-proceedings meeting, they were often unable to comprehend what they were expected to do or how they should perform, and they were largely silent. Importantly, there was no separate and/or independent representation for children within the pre-proceedings meetings. Whilst advocacy for parents was available, it was observed to be at best patchy. A detailed discussion about the role of advocacy within the pre-proceedings meeting is detailed in Holt et al, (2013). It is important to note that in almost all meetings observed legal representatives for parents were unfamiliar as to what to do, operating within a terrain largely dominated by the local authority. There was very

little evidence of active brokering by legal representatives on behalf of parents, even when decisions that were being made seemed to be unfair, unjust and without detailed consultation.

Second project – Evaluation of the impact of introducing a Family Court advisor into pre-proceedings practice.

Summary of contribution to knowledge

At the pre-proceedings stage a Family Court Advisor can focus the pre-proceedings meeting around the needs and wishes of the child/ren; can broker more effective relationships with parents; can offer additional advice and support for social workers in terms of plans of action and assessment of children and families; and can have a 'headstart' should a case go into proceedings thus potentially reducing delays in the court process. In some cases where contributions from the Family Court Advisor were taken on board and where they were not later challenged in court there did appear to be more robust assessments and decision making, and less delays for children and families. However in other cases courts continued to demand further assessments of families, thus delays were compounded. Findings suggest that most effective practice and consequent outcomes for children and families occurs when all stakeholders in child protection, from individual social workers to the judiciary, work together to plan whole systemic change. It is crucial to note that in all cases the resources needed to engage in rigorous pre-proceedings practice are significant.

Outline of the study

The further three data collection sites are part of the most recent and on-going research project I am co-lead on (with Dr Karen Broadhurst, University of Manchester), the 'Evaluation of the Early Intervention of the Family Court Advisor in Pre-Proceedings Work with Children and Families' (commissioned by Cafcass). This project was highlighted in the recent Family Justice Review as an important on-going piece of research exploring ways in which pre-proceedings decision-making involving the welfare of children and families on the 'edge of care' might be more effective. This project has been extended from the initial pilot areas of Coventry and Warwickshire (Broadhurst et al, 2013) to Liverpool (Holt et al, 2013).

Method

In this work, alongside the analysis of case file documents, semi structured interviews are analysed using the flexible technique of thematic analysis (Braun and Clarke, 2006) where patterns and themes within and across data are identified, analysed and reported. With regard to the case files a template was agreed by all researchers in terms of the information required from the documents. This ensured consistency and transparency and was a collection of data concerning the context of cases and, as the projects progressed, structural issues pertinent to analysis. For example family composition; presenting issues; presence of legal representation at pre-proceedings meeting; time frames from the families becoming known to social services, through pre-proceedings and should a case to progress into proceedings. Minutes of pre-proceedings were analysed using thematic analysis as below.

The interviews were transcribed verbatim, and after individual coding the team met together to discuss initial analysis, transparency and consistency. As with much qualitative research this was an iterative process and regular meetings afforded the opportunity to probe and discuss emergent themes.

It is acknowledged that there are a number of software programmes that can be used to support analysis of qualitative data (for example, NVivo, Atlas.ti). However, the analysis here was carried out using more traditional pencil and paper methods. This was in part a pragmatic decision as only one of the team was familiar with a computer assisted analysis package. It is often noted that unless an 'expert' in using these systems it is easy to create and record too many data in too much detail (because the computer can do this), to rely on descriptive codes and simple themes, (because the user is not skilled in using the software), or to fall into the 'coding trap' (Johnston, 2006). This latter point was most important to me as coding is a means to an end rather than an end in itself and I did not want to develop computer assisted skills at the expense of imaginative and reflective thinking.

The third pilot site (Liverpool) built on learning from Coventry and Warwickshire, and whilst data collection has only recently been completed the project gained significant momentum and attracted considerable ministerial and judicial interest. It has been interesting to engage in this piece of work as policy and national guidelines for reducing delays should child care cases progress to court evolve.

Findings

The findings from the Coventry and Warwickshire pilot and the interim findings from the Liverpool site are now published (Broadhurst et al, 2012; Holt et al, 2013). In this study the most experienced Family Court Advisors were recruited to the project, and the experience and expertise was helpful in a number of ways; brokering more effective relationships with parents; suggesting additional assessment work; gaining a 'headstart' should a case progress to court therefore reducing replication and delays for children and families, and importantly representing the voice of the child. It was apparent in the earlier work that legal representation at the pre-proceedings meetings suffered from problems similar to those in stage one (Holt et al 2011).

Whilst replicating some of the findings of the Coventry and Warwickshire study, I would argue that the most important impact of rolling the study out to Liverpool was the considerable investment by multiple stakeholders at the outset of the project. Very thorough negotiations and planning prior to the commencement of the evaluative stage of the research meant that the authority committed significant resources to implementing a pre-proceedings protocol in a highly rigorous, transparent and consistent manner. The pre-proceedings protocol was driven by a judicial commitment to resolving cases in court within the 26 weeks time limit, and whilst there are serious concerns about the implications of this for children and families, the pre-proceedings practice represents a thorough understanding of the need for detailed systemic planning for change.

Notwithstanding the potential positive impact of the role of the Family Court Advisor in pre-proceedings it has to be recognized that the work is in the context of

'proportionate working' and can only be one part of a whole complex system that must consider working practices across all agencies/organisations.

Concluding comments

My interpretation in this thesis is that introducing a statutory time limit of 26 weeks for the majority of public law child care cases is an attempt to ensure compliance with court targets, thus reducing costs, and is nothing to do with the rhetoric of the timetable for the child. In practice the tightening of timescales within the court will only result in spillage elsewhere. Moreover, the Bar Council (2012), and Holt (2014) have expressed concern that if issues are not sufficiently explored and all the options considered, this could lead to miscarriages of justice. Importantly, the child could be left holding the risk for longer before a case finally proceeds to court and thereby will wait longer for a permanent placement to be found upon conclusion of the court proceedings.

Recent judgements from the Supreme Court and Court of Appeal notably *Re B (A Child)* [2013] UKSC 22, *Re B-S (Children)* [2013] EWCA Civ 1146*, Re G (A Child)* [2013] EWCA Civ 965 and *Re E (A Child)* [2014] EWHC 6 (Fam) suggest that there should be a move away from linear decision making with a move to holistic assessments and planning for children. In relation to pre-proceedings protocols and practice, the judgement of Lord Justice McFarlane in *Re G* is of particular relevance. Lord Justice McFarlane raises the important issue of the '*least worst outcome'* for the child. If we start at an attempt at rehabilitation with family the *least worst outcome* is adoption. If however, we start at adoption the *least worst outcome* could be rehabilitation with family. It could be argued that moving important decision making

to the pre-proceedings stage in an attempt to divert cases away from court may in effect promote this linear approach to decision making – we have tried rehabilitation, that has not succeeded so the least worst option for the child is adoption. It could be argued that an early steer from the court, so in effect cases proceeding to court at a much earlier stage could potentially facilitate an increased number of children returning permanently to live with their family.

It appears convincing to me that achieving holistic assessments as outlined in these recent important judgements from both the Supreme Court and Court of Appeal requires a move away from further procedure and timescales being introduced with legislative and policy changes. These currently simply support and reinforce a linear approach to decision-making.

When the state is so concerned about the welfare of a child that it intends to seek an order to remove a child from their family, it is crucially important that decisions in respect of the most vulnerable children and their families are fair and proportionate. It is my contention that the family justice system must provide the necessary safeguards in the most complex cases. Furthermore if, as I contend, the court should appropriately take responsibility in the most complex cases, the court must also accept there are implications in taking on this responsibility in respect of increased resources and costs. Recent changes to private law proceedings introduced with the Legal Aid Sentencing and Punishment of Offenders Act (2012) have resulted in scenes within the family court that resemble a Dickensian novel with Pickwick delivering his papers and litigants in person descending on the court with resulting chaos and confusion (Holt, 2013). Increasingly within private law proceedings we are witnessing the

territory skirmishes that take place when alternative forms of dispute resolution are adopted in complex matters that require the oversight of the court.

There is overwhelming evidence that the courts are not appropriately resourced to manage the increased volume of work in family cases, but the government and the judiciary cannot simply reduce their timescales, leaving the most vulnerable children holding the risk whilst professionals try to navigate administrative space. It is quite unacceptable that these important decisions are being ushered into a pre-proceedings protocol supporting the rhetoric of the timetable for the child. Let me be really clear the rhetoric of the timetable for the child is a difficult one to dispute, but I argue that these changes are principally designed to reduce costs and court time. Achieving timely decision making with the *timetable for the child,* as the most important theme is indeed important. The *timetable for the child* within the context of a pre-proceedings protocol will at best remain the same, and at worst result in additional delay when diversion plans are not successful and important time has been wasted prior to an application being made (Holt, 2014).

Future Research

I remain committed to research that has justice for children and families at its heart. I am stimulated by a desire to probe further the changes introduced by the Children and Families Act (2014). In particular I am interested to consider long term outcomes for children who have been subject to pre-proceedings procedures. I have recently applied to the Nuffield Trust to support a research project in Northumberland looking at edge of care cases.

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Appendix 1

Related Research

Holt, K. and Kelly, N. (2011) Evaluating the Impact of Training 2008-2010 on Practice Working with Children and Families. Bradford Safeguarding Children Board.

Appendix 2

Conference Papers

Holt, K.E., Broadhurst, K. & Kelly N., Doherty, P. (2013) The role of the Family Court Advisor in pre-proceedings – is it a workable model? Findings from an English case study in Coventry, Warwickshire and Liverpool. ISPCAN Conference, Dublin.

Holt, K.E., Broadhurst, K. & Kelly N. (2012) Evaluating the Impact of Early Involvement of the Child and Family Court Advisor during Pre Proceedings Work: Manchester University, NSPCC/University of Lancaster.

Holt, K.E., Broadhurst, K. & Kelly N. (2012) Evaluating the Impact of Early Involvement of the Child and Family Court Advisor during Pre Proceedings Work: Assessment, Timescales and Case Trajectories. BASPCAN, Belfast

Holt, K. E. & Broadhurst, K. (2012) Talking at Cross Purposes, Parent – Professional Interaction in Pre-Proceedings Work in England BASPCAN, Belfast.

Holt, K.E. (2011) Foibles and Fortunes of increased regulation at the front door of children's social care. Joint Social Work Education Conference, University of Manchester.

Holt, K. E. & Broadhurst, K. (2011) Talking at Cross Purposes, Parent – Professional Interaction in Pre-Proceedings Work in England: A microanalysis of

talk. University of Sheffield

Holt, K. E. & Broadhurst, K. (2011) Talking at Cross Purposes, Parent – Professional Interaction in Pre-Proceedings Work in England: A microanalysis of talk. University of Bradford

Holt, K.E. & Broadhurst, K. (2010) The Public Law Outline: Improving pre-proceedings work in Social Work Practice. Joint Social Work Education Conference, University of Hertfordshire.

Holt, K.E. & Kelly, N. (2010) Decision Making in Child Protection: Interrogating the impact of policy and procedure on social work practice and the assessment of risk. Joint Social Work Education Conference. University of Hertfordshire.

Holt, K.E. & Broadhurst K. (2010) The Limits of Procedure: the Impact of the Public Law Outline on Social Work Practice in the UK. World Social Work Conference. Hong Kong.

Holt, K. E. & Broadhurst, K. (2010) Foibles and Fortunes of a Written Text:. Exploring the impact of the PLO on social work practice with families. Cafcass Conference, Birmingham

Holt, K.E. & Broadhurst, K. (2009) Partnership with Parents: Is the PLO more than just procedure? BASPCAN International Conference, University of Swansea.

Holt, K.E. & Broadhurst, K. (2009) Partnership with Parents and the Limits of Procedure. Joint Social Work Education Conference, University of Hertfordshire

Appendix 3

Invited Presentations:

June 2013 Invited Keynote Speaker at the Family Justice Board Conference, Coventry.

January 2013 Invited Chair for the Government Forum on Child Protection 2013. London.

October 2012 Keynote presentation at the Family Justice Conference, Leicester.

June/July 2012, three presentations at one day conferences reporting on the Interim Findings of the Coventry and Warwickshire Pre-Proceedings Pilot, invited by Action for Children, Leeds, Manchester, London.

Appendix 4

Funded Research

May 2011 – ongoing. Evaluating the Impact of Early Involvement of the Child and

Family Court Advisor during Pre Proceedings Work. Coventry, Warwickshire and Liverpool Pre-Proceedings Pilot. (65K)

2009 - 2011 Exploring the Impact of the Public Law Outline, specifically the intended and unintended consequences of the new protocol's likely diversion of a percentage of 'edge of care' cases from care proceedings. The study focused in detail on decision-making in the administrative space, in regard to Human Rights issues. (25K)